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FILE: LIN 04 191 50140 Office: NEBRASKA SERVICE CENTER Date: APR 26 2006

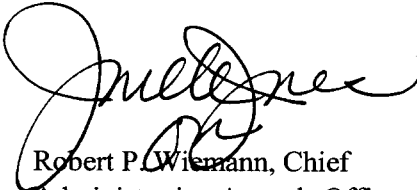
IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is an applications software design, development, system consulting services company that seeks to employ the beneficiary as a network and systems administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a network and systems administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the June 12, 2004, letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: (1) network and systems administration: providing primary technical support for LANs, PCs, WANs, TCP/IP, VPN, Servers and networks; being responsible for disaster recovery for both internal corporate data and client services data; meeting with clients to understand data and system needs, and designing network solutions according to client needs; troubleshooting networks, systems and applications to identify and correct malfunctions and other operational problems (25% of time); (2) database administration: monitoring performance of Oracle and SQL Server databases, managing database disaster recovery; creating indexes and tuning performance as needed (20% of time) (3) application testing and deployment: creating test environments and developing test cases, testing applications based on test cases, managing product releases, including release notes; and communicating with customers about new features and improvements (35% of time); and (4) customer implementation support: providing consulting services to customers to implement the petitioner's products into solutions for customer needs, interfacing with the development team where product fixes/improvements are needed, documenting issues and requests and resolving customer issues where possible, and tracking assigning requests to the product team as needed (20% of time). The petitioner stated that the proffered position requires a minimum of a bachelor's degree in electrical engineering, CIS or related computer engineering discipline.

The director found that the proffered position was not a specialty occupation because the Department of Labor's *Occupational Outlook Handbook (Handbook)* does not indicate that a degree in a specific specialty is required for the position.

On appeal, counsel states that a systems administrator is a specialty occupation and that the petitioner submitted adequate evidence to establish the complexity of the job duties.

The AAO agrees with counsel that the proffered position is a system administrator, and is a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director found that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel asserts that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel asserts that the duties of the proffered position are more specialized and complex than the duties of a systems administrator as described in the *Handbook*. Counsel asserts that due to the hosting of multiple clients and the complex network and system integration involved in deploying, monitoring, and problem solving regarding the company's proprietary "product modules," each of the functions referenced in the job description requires a complexity and level of knowledge, and experience, that are the product of a Bachelor's degree or higher level of education. In support of his assertion, counsel submits a letter from [REDACTED]

██████████ Professor and Chair, Department of Management, Youngstown State University. The author states that he reviewed the job description and the petitioner's product as a basis for his opinion that the proffered position requires at least a bachelor's degree in computer science or a related engineering discipline.

While the AAO does not find ██████████ opinion to be persuasive,<sup>1</sup> it does find the petitioner to have described job duties of sufficient complexity to establish that the knowledge required to perform them is usually associated with a baccalaureate degree in a specific specialty. Therefore, the petitioner has demonstrated that the proffered position is a specialty occupation under the criterion 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO now turns to a consideration of the beneficiary's qualifications to perform the duties of a specialty occupation.

The petitioner has submitted copies of the beneficiary's diploma and academic transcripts from Kuvempu University in India that indicate he holds a bachelor's degree in electrical engineering and a copy of his academic transcript from Youngstown State University showing graduate coursework in electrical engineering. The record does not contain a credentials evaluation that would establish the beneficiary's undergraduate degree as the equivalent of U.S. baccalaureate degree in electrical engineering, as provided for at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). However, his Youngstown State University transcript indicates that the University found his foreign undergraduate degree to be a bachelor of engineering degree<sup>2</sup> for the purposes of admitting him to its graduate program. Based on the beneficiary's enrollment in a graduate program at an accredited U.S. university, which has found his foreign degree to be a baccalaureate in engineering, the AAO concludes that the petitioner has established that the beneficiary holds a foreign degree that is the equivalent of a U.S. bachelor's degree in engineering, a degree directly related to the duties of the proffered position. Accordingly, the petitioner has established the beneficiary's qualifications to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.

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<sup>1</sup> The record does not establish ██████████ expertise in the field of information technology. While the AAO notes that the professor chairs the Department of Management at Youngstown State University, the record provides no evidence that that he has academic experience in computer science or engineering. Although the professor also states that he has experience working with the information technology industry, the record offers no proof of his work within the industry. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

<sup>2</sup> Information provided by Youngstown State University's School of Graduate Studies indicates that acceptance into its Master of Science in Engineering program requires the minimum of a baccalaureate degree. [www.ysu.edu/GradSchool/admint.shtml](http://www.ysu.edu/GradSchool/admint.shtml).